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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/768,990	01/23/2001	Diane R. Hammerstad	10005378-1	4199

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HEWLETT-PACKARD COMPANY  
Intellectual Property Administration  
P.O. Box 272400  
Fort Collins, CO 80527-2400

EXAMINER
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DURAN, ARTHUR D

ART UNIT	PAPER NUMBER
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3622

MAIL DATE	DELIVERY MODE
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08/28/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/768,990	<b>Applicant(s)</b> HAMMERSTAD, DIANE R.	
	<b>Examiner</b> Arthur Duran	<b>Art Unit</b> 3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 9-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 9-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Claims 1-6 and 9-13 have been examined.

#### *Response*


In view of the Remand from the BPAI filed on 8/15/2007, PROSECUTION IS HEREBY REOPENED. set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

  
ERIC W. STAMBER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

#### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-6 and 9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alberts (5,937,392) in view of Tso (6,047,327).

Please note that the below rejection is based on the BPAI rejection explanation stated on pages 5-8 of the Remand dated 8/15/07.

Claims 1-6 and 9-13:

Claim 1 states a method of delivering content and time significant advertising from a server to a subscriber comprising the steps of:

accepting a subscriber profile including an advertising preference and a time of delivery preference;

storing said subscriber profile at the server;  
determining an attribute of and a time significance for an advertisement;  
recalling at the server said stored subscriber advertising preference profile;  
comparing said subscriber advertising preference profile to said attribute;  
determining a current time of the subscriber;  
comparing said current time to said significance;

including said advertisement with the content at the server when said current time matches said time significance and said subscriber advertising profile matches said attribute; and

delivering the content and said included advertisement from the server to the subscriber when said current time determination matches said time of delivery preference.

These features are rendered obvious by Alberts and Tso in light of the principles on the

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law of obviousness recently articulated in *KSRInt'lCo. v. TeleflexInc.*, 127S.Ct. 1727, 82 USPQ2d 1385(2007).

Using claim 1, *supra*, as representative of the claims, the following analysis is made.

Alberts discloses delivering time-significant advertising content to users over a network, such as the internet:

“Alternatively, an advertiser may want a concentration or intensification of ads at particular times, perhaps in response to a profile of users, e.g., different times for children versus adults, or for people accessing the site from home versus work.” (Col. 1, lines 43-48).

Alberts uses an advertising database on a database engine (which communicates with an ad server to serve up an ad in response to a request made by a user on the internet; col. 3, lines 18-28, Fig. 1) that contains tables with "information indicating parameters for the display of ads" (col. 3, lines 31-33) that can include "stop/start information for when the ad is to run" (col. 3, lines 41-42). The information, such as stop/start information, that is used to trigger the delivery of an ad is determined based on statistics the ad server receives on how often ads are served and how often viewers click on them (Alberts, col. 4, lines 4-26).

Alberts differs from the claimed method in that the triggering information the claimed method uses comes from information provided in a subscriber profile rather than, as with Alberts, statistics taken from the behavior of users accessing websites.

Tso discloses sending information over a network to a user depending on information contained in a user profile:

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“What information is sent to the user is dependent on various factors, including: the location of the user; the time of day; and the information contained in a user profile.” (Col. 1, lines 48-52).

Tso uses a system which comprises a server (called an "InfoCast" server) connected to a network that contains a "subscriber database at the user's home" (col. 4, 11.38-41; referred later in Tso as "subscriber database 53") and an "InfoBite" database (element "50," col. 4, line 44; "InfoBite" is information sent in lieu of the full item, see col. 7, lines 30- 40), and a schedule/resource controller (element "61"):

“Schedule/resource controller 61 is responsible for filtering the InfoBites that are sent to a user based upon the user's profile as contained in the user's record and subscriber database 53 - i.e., a subscriber profile filter, the user's current location - i.e., a locational filter, and the time of day - i.e., a temporal filter.” (Col. 10, lines 41-46).

This passage appears to teach the delivery of content filtered on the basis of information, such as the time of day, contained in a subscriber profile.

Given the teachings of Alberts and Tso, it would have been obvious to one of ordinary skill in the art to deliver time-significant advertising content to a subscriber over a network triggered by information contained in a subscriber's profile. While neither Alberts and Tso explicitly show comparing the current time with the time specified in the subscriber profile as a prerequisite to delivering content in accordance with the subscriber's specified time, such a step would be inherent to any method, such as the one Tso describes, that seeks to deliver time-significant content based on the time of day specified in a subscriber's profile. Unless such a comparison were first to be made, a subscriber would never be guaranteed receipt of content at

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the time specified in his/her profile. "The obviousness analysis cannot be confined by ... overemphasis on the importance of published articles and explicit content of issued patents ...."KSR, 127 S.Ct. at 1740, 82 USPQ2d at 1396.

Additionally, in further regards to claims 1-6 and 9-13, Alberts discloses that an ad can be targeted to profiled users and that ads can be targeted for particular times:

"(5) Alternatively, an advertiser may want a concentration or intensification of ads at particular times, perhaps in response to a profile of users, e.g., different times for children versus adults, or for people accessing the site from home versus work" (col 1, lines 43-50);

(12) The present invention provides an integrated system that allows ads to be served in a highly flexible and accurate manner a desired number of times throughout the day and evenly distributed throughout the day, or intensified at times if desired. Different ads can be served based on different triggering events, such as the location of the user, the type of information being accessed by the user, or the categories accessed" (col 2, lines 30-40).

Notice that Alberts designates that times vary depending upon who the user is receiving the ad. For example, when an ad is slated for children then that ad could be targeted for time slots before 10pm. Then, when a user utilizes the system, the system would check if the user is a child and also what time it is. The ad slated for children would only be shown to children before 10pm.

Alberts further discloses targeting users based location, particular users, and/or time of day:

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“(10) The system can predictively model the number of hits to control the distribution of serves, either to ensure even distribution, or to concentrate ads during particular times. The system also preferably has triggering information that allows ads to be targeted. Ads can be targeted to users seeking certain types of information, e.g., on a yellow pages system or on a search engine, access to "photography" could cause the serving of an ad for a manufacturer of film; to users from particular geographic locations; to particular users; or to users at different times of the day” (col 2, lines 15-25).

Alberts further discloses scheduling ads, scheduling ads based on user activities, adapting for time zones, adapting for regions, adapting for time regions:

“(27) While the counters are used to provide an appropriate balance in the numbers of serves for each ad relative to the others, other methods can be used to provide appropriate distribution throughout the day. FIG. 5 is a graph representing how usage might vary throughout one day from midnight to midnight (the graph here is merely illustrative and is not meant as a precise measure). Based on recurring patterns, such as when most people work, the time zones, and the day of the week, the number of hits to a particular service may be predicted based on prior experience. The hours of the day can be broken up into time regions that may be less frequent during certain non-peak times and more frequent during peak times, and the frequency with which hits are calculated can be varied from numbers of hits per day to number of hits per time periods, with the time periods being reloaded from the database to the ad server by the controller on a more frequent basis throughout the day. This approach, in effect, alters the granularity with which the hits are monitored. With this approach, the time



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periods can vary in duration from short duration during peak times to longer duration during non-peak times" (col 6, lines 25-56).

Alberts does not explicitly disclose storing a subscriber advertising profile at the server.

However, Tso discloses advertisers and marketers targeting individual users based on profile, time, location, etc:

"(8) Advertisers and marketers who currently advertise on electronic services also have limited access to users and often can not focus their advertisements due to a lack of information for each user, including positional and demographic information.

(9) Thus, it would be desirable to have an electronic information distribution system which would bypass the limitations stated above" (col 1, lines 33-41).

Tso discloses individual subscriber profiles, storing profiles of subscribers at the server, checking the current time of the user to the time significance of the advertisement, time and location based advertising, and time and location based advertising that takes the user profile into account, and scheduling advertising (Fig. 3, server a17; Fig. 5; and below):

"(62) In addition to the traffic report example as described above, another example would involve the use of the user's profile in addition to the time of day and the location of the user for businesses which wish to advertise their services or products depending on additional criteria. For example, eating establishments may wish to send advertisements to the users located near each establishment's respective vicinity close to mealtimes. These advertisements may contain menus or daily specials and, in addition to being targeted to specific users based on their location and the time of day, can also be targeted based on the user's food preferences in

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subscriber database 53. Thus, for example, if a user is a vegetarian, schedule/resource controller 61 would only forward the InfoBites from vegetarian eating establishments or only forward the InfoBites containing the vegetarian specials from the eating establishments” (col 15, lines 50-67).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Tso’s individual subscriber profiles which can be stored at the server to Albert’s user profiles and utilization of servers. One would have been motivated to do this in order to better target content to users and maintain accessibility of user information for targeting.

Additionally, Tso discloses sending information to a user based on factors relating to user location, time of day, user profile and also that the user can adjust or change their profile through user feedback:

“(11). . .What information is sent to the user is dependent on various factors, including: the location of the user; the time of day; and the information contained in a user profile. The user profile indicates the areas of interest of the user and can be dynamically adjusted based on user feedback (col 1, lines 47-53).

(22) InfoFeed interface 57 enables content providers to update data and resources on server A 17 for specific subscriber locations and times. Thus, content providers may feed information only to those InfoCast servers matching a specific criterion (col 6, line 64-col 7, line 1).

(36) Schedule/resource controller 61 is responsible for filtering the InfoBites that are sent to a user based upon the user's profile as contained in the user's record and subscriber

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database 53--i.e., a subscriber profile filter, the user's current location--i.e., a locational filter, and the time of day--i.e., a temporal filter. Alternatively, the filtering may be performed on a client, such as client A 23 (col 10, lines 40-48).

(50) FIG. 5 is a flow diagram of the preferred operation of the invention. The description of FIG. 5 will be integrated with a detailed example, wherein the filter used by schedule/resource controller 61 will be based on the time of day, the location of the user, and user profile criteria. Thus, the filter used by schedule/resource controller 61 is composed of three filters, a temporal filter, a positional filter, and a subscriber profile filter (col 13, lines 25-35).

(54) In Block 107, assuming that there is at least one InfoBite that matches the time of day and location of user criteria, schedule/resource controller 61 will send that InfoBite to client A 23 through the use of messaging interface 67" (col 14, lines 15-20).

Also, in regards to claims 2 and 10, Tso further discloses utilizing mailing address information (col 16, lines 5-10; ). And, since Alberts discloses targeting a user based on user location and also geographic region (col 7, lines 10-20; col 2, lines 15-25; col 2, lines 30-40) and Alberts discloses adjusting for time regions and time zones (col 6, lines 25-56), and Tso discloses that mailing address information can be utilized (col 16, lines 5-10), it would be obvious that Alberts can adjust the time zone to the location of the user which can include a postal code of the user. One would be motivated to do this because postal code is an obvious and convenient way to indicate a geographic region.

Also, in regards to claim 13, Tso further discloses multiple network interfaces or devices to which the user can have content delivered (Figures 1-3).

### *Response to Arguments*

2. Applicant's Appeal with respect to claims 1-6 and 9-13 have been considered but are moot in view of the grounds of rejection above. Please note the Remand by the BPAI dated 8/15/2007. Also, please particularly note that the above rejection is based on the BPAI rejection explanation stated on pages 5-8 of the Remand dated 8/15/07. Also, the Applicant's 37 CFR 1.131 Affidavit is now moot as the Batachia reference is no longer being utilized in the rejection.

### *Conclusion*

The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

a) Ben-Shaul (20020010798) discloses a user being able to specify preferred advertisements and preferred deliver times for advertisements:

“[0027] It is yet another object of some aspects of the present invention to provide a decentralized and differentiated content and application delivery system that delivers the content to the end customers, and to allow end customers to customize the delivery process based on local preferences, content priority, delivery time and the characteristics of the resources associated with the delivery”;

b) Griggs (20020029384) discloses a user being able to specify preferred advertisements and preferred deliver times for advertisements:

“[0009] A set of user preferences preferably can be modified by an authorized user. User preferences can include, but are not limited to, identified content providers, user likes and

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dislikes, and preferred times to receive program transmissions. In further embodiments of the instant invention, user preferences are automatically updated based on program transmissions selected through a corresponding account”.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur Duran whose telephone number is (571) 272-6718. The examiner can normally be reached on Mon- Fri, 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Arthur Duran  
Primary Examiner  
Art Unit 3622

8/21/2007